

## **REMARKS**

The non-final Office Action of November 6, 2008 has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested. Claims 1-7, 11, and 21 have been amended. No new matter has been added. Claims 1-7, 11-17, and 21-27 remain pending upon entry of the present paper.

### **Allowable Subject Matter**

Preliminarily, Applicant notes with appreciation the indication that claims 12-17 include allowable subject matter.

### **Rejections under 35 U.S.C. § 101**

Claims 1-7 and 21-27 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-7 stand rejected for neither transforming underlying subject matter nor positively tied to another statutory category that accomplishes the claimed method steps. Applicant respectfully traverses.

Claim 1 recites, *inter alia*, modifying the display of the object in accordance with the modified non-textual attribute. Such a step constitutes a “transformation” satisfying the requirements set forth in 35 U.S.C. § 101. *See In re Bilski*, 88 USPQ 2d. 1385, 1397 (Fed. Cir. 2008) (clarifying that the electronic transformation of data into a visual depiction is sufficient to render a claim patentable). Claims 2-7 depend on claim 1, and thus are allowable for at least the same reasons as claim 1.

Claims 21-27 stand rejected for not clearly suggesting to one of ordinary skill that a “physical machine-readable storage medium” could be one of signals, or other forms of propagation and transmission media which fail to be an appropriate manufacture under 35 U.S.C. § 101.

Without acquiescing to the Office’s assertions, Applicant has amended claim 21 (from which claims 22-27 depend on) to recite a “tangible machine-readable storage medium”. It appears that propagation signals and carrier waves are not tangible. *See In re Nuijten*, 84 USPQ

2d. 1495, 1502 (Fed. Cir. 2007) (articles of manufacture are tangible articles whereas electric or electromagnetic transmissions are not tangible). Accordingly, claim 21 is directed to statutory subject matter.

**Rejections Under 35 U.S.C. § 103**

Claims 1, 11, and 21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Schein et al. (U.S. Patent No. 6,075,575, hereinafter “Schein”). Applicant respectfully traverses this rejection for at least the following reasons.

Amended claim 1 recites, *inter alia*,

modifying a non-textual attribute associated with the object by an incremental amount for each of at least two times that the object is selected, wherein the non-textual attribute after each modification visually indicates a number of times the object has been selected.

Even assuming, but not conceding, that the interpretation of Schein given by the Office is proper, Schein fails to teach or suggest such features. For example, the scroll bar of Schein at least fails to show the feature of the non-textual attribute, after each modification, *visually indicating* a number of times that the object has been selected. Stated differently, after a user clicks on a scroll bar, the position of the scroll bar does not visually indicate to the user the number of times the scroll bar has been clicked. At best, the user may deduct in Schein that the scroll bar has been clicked; however, a user would not know the number of times that the scroll bar has been clicked unless the user independently kept track. Therefore, Schein fails to teach or suggest at least the feature of wherein the non-textual attribute after each modification *visually indicates* a number of times that the object has been selected as recited in claim 1. Accordingly, claim 1 is allowable for at least these reasons.

Independent claims 11 and 21 recite features similar to the distinguishing features of claim 1, and are allowable for at least the same reasons as claim 1 above.

**CONCLUSION**

All rejections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. Should the Examiner find that a telephonic or personal interview would expedite passage to issue of the present application, the Examiner is encouraged to contact the undersigned

attorney at the telephone number indicated below. Applicant looks forward to the passage to issue of the present application at the earliest convenience of the Office.

Respectfully submitted,  
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